Supreme Court of the United States

OCTOBER TERM 1944

No. 14

R. J. THOMAS,
Appellant,

against

H. W. COLLINS, Sheriff of Travis County, Texas.

BRIEF ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

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Statement of the Case

This is an appeal from a decision of the Supreme Court of Texas, 174 S. W. (2d) 958, which upheld an order of the District Court of Travis County, Texas. This order found appellant Thomas guilty of contempt of court for violating an injunction issued by that Court and prohibiting appellant Thomas from violating the provisions of Art. 5154a (Vernon's Annotated Texas Statutes). Appellant properly raised the question of the constitutionality of these provisions in the Courts below.

Statement of Facts

The appellant, Mr. R. J. Thomas, is President of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, and one of the Vice-Presidents of the Congress of Industrial Organizations. A resident of the State of Michigan, he came to Texas to address workers of the Humble Oil Company at Houston on September 23, 1943. Before doing so, he publicly announced that he would solicit membership in the Oil Workers International Union at the meeting without first obtaining an organizer's card as required by Section 5, of H. B. 100 (Art. 5154a, Vernon's Annotated Texas Statutes). A preliminary restraining order was issued on September 22, 1943 to restrain Mr. Thomas from "soliciting memberships" in the O.W.I.U. unless he complied with the law. (See Exhibit A.) Mr. Thomas gave the speech as advertised and on September 25th was found guilty of contempt of court for "violation of the law and of the order of this court," and sentenced to three days imprisonment and a $100 fine. A petition for a writ of habeas corpus was thereafter filed in the Texas Supreme Court, the denial of which resulted in the appeal to this Court.

Interest of the American Civil Liberties Union

This brief is filed on behalf of the American Civil Liberties Union as *amicus curiae*. The American Civil Liberties Union is a nation-wide, non-profit organization, whose members are lawyers and laymen vitaliy interested in the preservation of the fundamental personal rights guaranteed to individuals by the Constitution of the United States and of the various states.

We have filed this brief because it is our conviction that the statute and orders involved in this case present a clear violation of the guarantees of freedom of speech and assembly embodied in the Fourteenth Amendment.

I. Free discussion of industrial relations and trade unions is constitutionally protected by the 14th Amendment.

In a long line of recent cases, this Court has established and underscored the proposition that, because freedom of thought and communication are the fundamental liberties of a free society, the right of free discussion "is to be guarded with a jealous eye". *A. F. of L.* v. *Swing*, 312 U. S. 321, 325; see *Schneider* v. *State*, 308 U. S. 147, 161; *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152, N. 4. In this trend towards close judicial scrutiny of possible limitations on civil liberties, one leading group of cases has established that free discussion of industrial relations is among the most important areas protected by constitutional guarantees. This was most explicitly recognized in *Thornhill* v. *Alabama*, 310 U. S. 88, 102-104:

> "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. *Hague* v. *C.I.O.*, 307 U. S. 496; *Schneider* v. *State*, 308 U. S. 147, 155, 162-63. See *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an im-

> portance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing. The merest glance at state and federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. • • •
>
> "• • • It does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern. A contrary conclusion could be used to support abridgment of freedom of speech and of the press concerning almost every matter of importance to society."

While the *Thornhill* case specifically involved picketing to publicize the facts of a strike, the principle necessarily includes discussion of broader aspects of industrial relations and the structure of society—as the language above itself indicates. And in *Hague* v. *C.I.O.*, 307 U. S. 496, this Court expressly recognized as a constitutional right the discussion of the benefits of trade unionism and the National Labor Relations Act.

Thus this Court has already and explicitly declared that any attempts to limit free discussion of labor problems and industrial relations constitute violations of the Constitution of the United States.

II. The injunction and the contempt order were an unconstitutional attempt to prohibit appellant from freely discussing industrial relations and labor unions.

Mr. Thomas' actions here involved can theoretically be divided into three parts. The formal speech (R. 279-290) (1) contained a long general discussion of public affairs and the advantages of trade unionism, and (2) ended with a short appeal to the audience collectively to join up. And, (3) Thomas then solicited one Pat O'Sullivan to join the Oil Workers International Union (see R. 297). It is clear that the first part is protected by the doctrine developed in Point I; the second might be somewhat different, if it is separable; and while under this statute restriction of the third also infringes appellant's constitutional rights, this question need not be passed upon here.

The injunction and contempt orders in this case were broadly worded to cover solicitation of "members" (Cf. Exhibit A), and the appeal to the audience to join is inextricably bound up with the more general discussion of trade unionism. Since this restriction on the first and second parts presents so clear a violation of constitutional rights, the validity of the limitation on the third need not be decided.

Courts may not enjoin the peaceable discussion of union matters before a group of three hundred people. *Hague* v. *C.I.O.*, *supra*; compare *Thornhill* v. *Alabama*, as

quoted on page 3, *supra*. Mr. Thomas' speech is primarily a long discussion of the role of trade unions in the war, both in increasing war production and in providing mass support to ensure a fight against fascist elements all over the world. He also told of the protection provided by our courts (R. 286), and quoted from several recent decisions of this Court.

Yet every part of this speech in a proper sense was an effort on his part to create a favorable attitude toward this Union. Viewed as a whole, it presented a favorable picture of unions and union members (R. 286, 288-9). Mr. Thomas' urging of those present to join the Union only took meaning from the favorable things he said about unions and his comments upon public affairs. Under these circumstances, the injunction and the resulting contempt order applied to the whole speech. To apply the statute to such general discussion was an improper restraint upon freedom of speech and in violation of the due process clause of the Fourteenth Amendment.[1]

III. The statute upon its face is an improper restriction upon the free discussion of industrial relations and labor unions and is therefore unconstitutional under the 14th Amendment to the Constitution.

While it is true the Texas Supreme Court has stated that the statute in question does not "vest unlimited discretionary power in the Secretary of State to grant or refuse a registration card * * *" (R. 324), nevertheless, the statute imposes unreasonable limitations upon one

1. "Soliciting union membership is in some respects * * * analogous to religious proselytising or soliciting membership in a political party * * *" Dodd, *Some State Legislatures Go to War—On Labor Unions*, 29 Iowa Law Review 148 (Jan. 1944).

desiring to exercise what would otherwise be his constitutional right of freedom of speech.

It may properly be inferred from the opinion of the Texas Supreme Court that the Secretary of State has a real discretion, even if it may not be arbitrarily used. The Court in stating that the statute does not "vest unlimited discretionary power," obviously implies that the secretary has a discretion, which although limited is nevertheless actual. This is emphasized when the Court elsewhere states that "the act confers no unbridled discretion upon the Secretary." Again the inference is clear that there is some degree of discretion in that officer.

Any discretion to refuse a card to a prospective organizer, thus limiting the right of a union to organize, invalidates the statute. *Hague* v. *C.I.O.*, 307 U. S. 496; *Lovell* v. *Griffin*, 303 U. S. 44.

Apart from this discretion vested in the Secretary as appears from the Texas Supreme Court's opinion, the act is invalid for the further reason that even if the Secretary must issue the card in a proper case, he is given the authority to investigate whether or not the case is a proper one.

The statute and the Court's interpretation thereof are wholly unrealistic in view of the subject matter. The pretense is that the purpose of the act is merely administrative. The fact is that the statute is bound to cause delay—and sometimes long delay—before one can exercise his right to do something which is important only if done immediately. To hold up "persuasion" even for a few days often denies the right of "persuasion" and particularly is this true in the field of trade unionism.

Under the interpretations of the Attorney General of Texas (R. 291, 295) and of the Texas Court (R. 294, 295,

303, 304, 308, 309) before delivering a speech such as appellant's, it is necessary to make application and submit qualified credentials to a state officer. The applicant may not organize until his application is acted upon, for Section 5 of the act says, "* * * such organizer shall at all times, when soliciting members, carry a card, and shall exhibit the name when requested to do so by a person being * * * solicited for membership". Section 4 of the act provides "* * * organizers * * * shall be elected by a majority vote of the members present and participating: provided, however, that labor unions, if they so desire, may require more than a majority vote for the election of any officer, agent, organizer or representative and may take any such vote of the entire membership by mailed ballots." Since Section 5e of the act requires that labor organizers describe their credentials in the application, the Secretary of State has at least the duty to examine and verify them. With this necessity as an excuse, it is obvious that the Secretary of State may easily postpone final action on an application for weeks or even months. If correspondence to and fro is necessary, the size of Texas is an indication of how long this might drag out, even if the application were acted upon promptly. In the case where a strike occurs requiring an immediate increase of union organizers, it is quite possible that the Secretary of State may delay acting until the strike is over under his power to examine the credentials of the applicant to see whether they are in accordance with the provisions of Section 4 quoted above. There is nothing in the decision of the Texas Supreme Court which would remove this power of examination from the state officer, for the decision, itself, states "the act confers no unbridled discretion upon the Secretary of State to grant or withhold a registration card at his will, but makes it

his mandatory duty to accept the registration and issue the card *to all who come within the provisions of the act upon their good-faith, in compliance therewith*". (Italics ours.) Nor could the applicant secure relief through the courts in this situation, for mandamus would not lie until it was clear that the Secretary of State was abusing his discretion.

We do not wish, at this time, to express any general opinion regarding the validity of legislation merely providing for disclosure or identification of persons acting as labor organizers as against a statute requiring a license. A consideration of this question is not necessary to a decision of this case. The situation in *City of Manchester* v. *Leiby*, 117 Fed. (2d) 661 (cert. den. 313 U. S. 562) upon which the Texas Supreme Court relies is in no way comparable to the facts in the case now before this Court. There, the ordinance merely provided for the registration of *any person* selling pamphlets or magazines in any street or public place within the city limits. There were no provisions as to the qualifications of those who would require the necessary badge, nor was there any discretion to be exercised.

We believe that the requirement of an identification card as a condition to organizing, even if no discretionary power is vested in the issuing authority, but which requires an examination and verification of the applicant's credentials becomes merely a subterfuge to hamper what would otherwise be a right to discuss freely labor organizations and industrial relations and is unconstitutional under the Fourteenth Amendment to the Constitution.

Conclusion

The present case illustrates the dangers which are inherent in legislation of the kind here under attack. Why,

for example, may we ask, did the state seek to enforce a prior restraint upon speech when it could easily have waited to see whether Mr. Thomas' address in fact violated the statute?

The injunction provisions of the act are an open invitation to its misuse by the authorities to limit free speech. It is an attempt to do indirectly what cannot be done directly. Sections 4, 5 and 12 "restore a system of license and censorship in its baldest form." See *Lovell v. City of Griffin*, 303 U. S. 444.

Under this act, one may try to dissuade others from joining unions without coming within the purview of the statute, yet if he does the opposite without the necessary card, obtainable in many instances not without great difficulties, and subject to the discretion of an administrative officer, he may be restrained. We think that the purpose and effect of this law is to hamper free speech and the exercise by labor of its constitutional rights.

We respectfully submit that the statute and the orders issued thereunder be declared unconstitutional.

Respectfully submitted,

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Exhibit A

INJUNCTION

FIAT

On this, 22nd day of September, 1943, there was presented to me the plaintiff's sworn petition for temporary restraining order in the above styled and numbered case and it appearing that the defendant Thomas has announced publicly to the press that he will violate the Texas law relating to soliciting memberships in a labor union without an organizer's card at a meeting to be held Thursday night, September 23, 1943, at Goose Creek, Harris County, Texas, and it appearing from said petition that said defendant is a "labor organizer" within the meaning of that term as used in House Bill No. 100, Acts of the 48th Legislature, 1943, and that said defendant will violate said law unless restrained from doing so, * * * and the Court having found from [fol. 203] the sworn petition and statements of counsel that irreparable injury will result to plaintiff unless the relief is granted and that plaintiff is entitled to the relief prayed for;

It is, therefore, Ordered, Adjudged and Decreed that R. J. Thomas be and he is hereby restrained and enjoined from soliciting memberships in Local Union No. 1002 of the O. W. I. U., and members for Local Union No. 1002 of the O. W. I. U. and from soliciting memberships in any other labor union affiliated with the C.I.O. and members of any other labor union affiliated with the C.I.O. while said defendant is in Texas without first obtaining an organizer's card as required by law.

It is Ordered that this fiat and a copy of plaintiff's petition be served forthwith on said defendant Thomas and that he be and appear before this Court at 10:00 A. M. on the 25th day of September, 1943, in the Court House in Travis County, Texas, and then and there show cause why a temporary injunction shall not issue as prayed for.

This temporary restraining order is issued at 4:00 P. M., Wednesday, September 22, 1943, and unless extended it shall expire within ten days from this date.

J. Harris Gardner, Judge,
53rd District Court,
Travis County, Texas.

MOTION FOR CONTEMPT

The defendant R. J. Thomas knowingly and wilfully and without justification or excuse violated the aforesaid order of this court and the writ of temporary restraining order as follows, to-wit:

(1) That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as required by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. [fol. 207] Thomas is Vice-President. The said O'Sullivan at said time was not a member of the local union of the Oil Workers Interna-

tional Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this court's order and the writ of temporary restraining order issued pursuant thereto.

(2) At said time and place R. J. Thomas in violation of this court's order did openly and publicly solicit an audience of approximately 300 persons, many of whom were not members of the Oil Workers International Union or any other C.I.O. union, to then and there join and become members of said Oil Workers International Union. Said R. J. Thomas at said time and place stated publicly that he made said solicitations in his capacity as Vice-president of the C.I.O. and that he was duly authorized by the said C.I.O. to solicit memberships in the Oil Workers International Union, and that it was his duty to assist in the organization of the Oil Workers International Union which is affiliated with the C.I.O. The said R. J. Thomas at said time and place publicly solicited all employees of the Humble Oil & Refining Company's plant at Bay Town, Texas, many of whom were present at said meeting and were not members of the Oil Workers International Union, to join the local Oil Workers International Union at that refinery, said Oil Workers International Union being affiliated with the C.I.O. At said time and place said R. J. Thomas did not have and had not applied for an organizer's card, as required by Section 5 of House Bill No. 100, Acts of the 48th Legislature of 1943.

Plaintiff states that the acts of R. J. Thomas above alleged were in open and flagrant violation of the order of this court and the writ issued pursuant thereto and were knowingly made by said defendant in violation of

this court's order and writ and said acts constitute contempt of [fol. 208] this court and should be punished by appropriate order.

JUDGMENT IN CONTEMPT

Be it Remembered, that on this the 25th day of September, A.D. 1943, there came on for trial the motion of the State of Texas in the above entitled and numbered cause, seeking to have R. J. Thomas held in contempt of court, for violating this court's temporary restraining order heretofore granted on the 22nd day of September, A.D. 1943, in the above entitled and numbered cause, and it appearing to the court that the same is in the nature of an information for constructive contempt of this court, and the defendant, R. J. Thomas, having been duly served with a copy of said temporary restraining order, and having duly waived service of the writ of attachment to appear and show cause why he should not be held in contempt of this court, appeared in person and by his attorney and the State appeared by and through the Attorney General of Texas, and all parties having announced ready for trial and the court having heard the pleadings and evidence is of the opinion and so finds that the defendant, R. J. Thomas, was on the 23rd day of September, A.D. 1943, a labor organizer for pecuniary consideration and that he had not applied for an organized card as required by Section 5 of the House Bill No. 100, and that he, the said R. J. Thomas, did in Harris County, Texas, on the 23rd day of September, A.D. 1943, violate this court's temporary restraining order heretofore issued injoining and restraining him, the said [fol. 225] R. J. Thomas, from soliciting members to join the Oil

Workers International Union, said union being affiliated with the Congress of Industrial Organizations without first having applied to the Secretary of State, of the State of Texas, for an organizer's card as required by law.

It is Therefore Ordered, Adjudged and Decreed by the court that the defendant, R. J. Thomas, is guilty of contempt of this court as charged in the information filed herein, and it is the judgment of this court that the defendant, R. J. Thomas, is so in contempt of this court for the violation of the law and of the order of this court on the 23rd day of September, A.D. 1943, and he is so adjudged, and his punishment is hereby assessed at imprisonment in the county jail of Travis County, Texas, for a period of three days and a fine of $100.00.

It is Therefore Ordered, Adjudged and Decreed by the court that the State of Texas do have and recover from the defendant, R. J. Thomas, a fine in the amount of $100.00, and all costs of this proceeding, and that execution may issue against the property of said defendant for the amount of said fine and costs, and that a capias shall forthwith issue herein, commanding the sheriff to arrest the said defendant, R. J. Thomas, to place him in jail in Travis County, Texas, and there safely to keep him for a period of three full days from the date hereof and until said fine and costs are fully paid or until said fine and costs are satisfied by confinement in the said jail for the period of time that will satisfy the same at the rate allowed by law.

J. Harris Gardner (Signed), Judge Presiding.